



RECEIVED  
OCT 22 2009  
MO ATTORNEY GENERAL

In the Missouri Court of Appeals  
Eastern District  
DIVISION ONE

LONNELL WALKER, SR. AND	)	No. ED92639
WALKER SERVICES, INC.,	)	
	)	
Appellants,	)	Appeal from the Circuit Court of
	)	St. Louis County
v.	)	
	)	No. 07CC-00248
MISSOURI DEPARTMENT OF	)	
INSURANCE,	)	
	)	
Respondent.	)	Filed: October 20, 2009

PER CURIAM

Before Kathianne Knaup Crane, P.J., Clifford H. Ahrens, J., and Nannette A Baker, J.

ORDER

In this consolidated appeal, Lonnell Walker, Sr. (Walker) and Walker Services Inc. (Walker Services) appeal from a judgment of the St. Louis County Circuit Court affirming (1) a decision by the Administrative Hearing Commission (AHC) denying Walker's application to renew his insurance producer license pursuant to section 375.414.1(2), (4) (8) and (10); and (2) RSMo (Supp. 2003) the decision of the AHC disciplining Walker Services and the corresponding decision of the Department of Insurance to revoke Walker Services' business entity insurance producer license pursuant to section 375.141.1(2), (4) and (8).

We have reviewed the briefs of the parties and the record on appeal and find the claims of error to be without merit. No jurisprudential purpose would be served by a written opinion reciting the detailed facts and restating the principles of law. The parties have been furnished with a memorandum opinion for their information only, which sets forth the facts and reasons for this order.

We affirm the judgment pursuant to Rule 84.16(b).

**In the Missouri Court of Appeals  
Eastern District  
DIVISION ONE**

### ***Introduction***

In this consolidated appeal, Lonnell Walker, Sr. (Walker) and Walker Services Inc. (Walker Services) appeal from a judgment of the St. Louis County Circuit Court affirming (1) a decision by the Administrative Hearing Commission (AHC) denying Walker's application to renew his insurance producer license pursuant to section 375.414.1(2), (4) (8) and (10); and (2) RSMo (Supp. 2003) the decision of the AHC disciplining Walker Services and the corresponding decision of the Department of Insurance to revoke Walker Services' business entity insurance producer license pursuant to section 375.141.1(2), (4) and (8).

### ***Background***

Walker's insurance producer license expired on August 1, 2005. The Director of Insurance (Director) denied his application for renewal, and Walker appealed the decision to the AHC. Walker is the president of Walker Services which provides automobile insurance to low income individuals. In November 2005, the Director filed a complaint with the AHC seeking its determination that Walker Services' insurance producer license be subjected to discipline. The AHC consolidated the cases for a hearing, but issued separate decisions in each case.

The following evidence was produced at AHC's evidentiary hearing. Customers Edna Jones, Tabitha Carter, Veronica Osborne, La'Kendra Grimes, Dion Beckham, Antoinette Jones, and Carlos Lopez Johnson filed complaints with the director. The AHC found that Walker issued invalid insurance ID cards with the policy number "pending" to Edna Jones, Osborne, Beckham, and Antoinette Jones. Further, the AHC found that Walker issued insurance ID cards from specific companies to Grimes and Johnson, but failed to secure a policy with the companies listed on their respective insurance ID cards. The AHC also found that Walker failed to timely remit customer premiums to insurance companies as required by regulation, and therefore

misappropriated the funds. Walker also signed Edna Jones' statement of no loss, Carter's refund check and Osborn's exclusion form. The AHC found that Walker was not authorized to sign these documents on behalf of his clients because the broker services contracts were inadequate to form valid powers of attorney. Finally, the AHC found Walker demonstrated incompetency, untrustworthiness and financial irresponsibility by collecting premiums and failing to remit them to insurance companies or return the money to the customers, failing to secure insurance coverage for some customers and signing customers' name on insurance documents without authorization. They denied Walker's application to renew his insurance producer license under Section 375.141.1(2),(4),(8)and (10).

In a separate decision, not provided to this court in the record,<sup>1</sup> the AHC found cause to discipline the business entity insurance producer license of Walker Services pursuant to Section 375.141.1(2), (4) and (8). The AHC considered only the Johnson transaction because this was the only transaction to occur after Walker Services was licensed on March 14, 2005. After another hearing, the Director adopted and incorporated the AHC decision, and revoked Walker Services' business entity insurance producer license.

### ***Points on Appeal***

We note that the appellants' brief fails to comply with Missouri Supreme Court Rule 84.04. These requirements are mandatory, and the failure to substantially comply with the rule preserves nothing for appeal. *Daniels v. State Div. of Employment Sec.*, 248 S.W.3d 630, 633 (Mo. App. S.D. 2008). "Compliance with the briefing requirements of Rule 84.04 is mandatory to ensure that appellate courts do not become advocates by speculating on facts and arguments

---

<sup>1</sup> This decision was ultimately included in the Respondent's appendix. However, "[t]he mere inclusion of documents in an appendix to a brief does not make them part of the record on appeal. We do not consider documents in an appendix that are not in the record on appeal. *Washington v. Zinn*, 286 S.W.3d 828, 831 (Mo. App. E.D. 2009) (citation omitted).

that have not been asserted.” *Lueker v. Missouri Western State Univ.*, 241 S.W.3d 865, 867 (Mo. App. E.D. 2008).

All five of appellants’ points fail to comply with Rule 84.04(d)(2), which states:

Where the appellate court reviews the decision of an administrative agency, rather than a trial court, each point shall:

- (A) identify the administrative ruling or action the appellant challenges;
- (B) state concisely the legal reasons for the appellant's claim of reversible error;
- and
- (C) explain in summary fashion why, in the context of the case, those legal reasons support the claim of reversible error.

The point shall be in substantially the following form: 'The [name of agency ] erred in [identify the challenged ruling or action ], because [state the legal reasons for the claim of reversible error, including the reference to the applicable statute authorizing review ], in that [explain why, in the context of the case, the legal reasons support the claim of reversible error ].'

We are bound by the assertion of error set forth in the point relied on. *Stacy v. Dep’t of Social Serv.*, 147 S.W.3d 846, 854 (Mo. App. S.D. 2004). Therefore, we need not review arguments or decide issues put forth in the argument section of a brief that are not fairly encompassed within the points relied on. *Id.*; Rule 84.04(e). Abstract statements of error which require us to resort to the record or argument portion of the brief are insufficient and preserve nothing for review. *Rainy v. Express Med. Transp.*, 254 S.W. 3d 905, 907 (Mo. App. E.D. 2008). Additionally, a blanket challenge to the underlying judgment, without more specificity, is insufficient. *Roberson v. KMR Constr. LLC*, 208 S.W.3d 320, 322 (Mo. App. E.D. 2006).

In the case at bar, the appellants’ points relied on are as follows:

1. The Court erred in finding that the Administrative Hearing Commission found cause to discipline the business Entity Producers License of Appellant, Walker Services, Inc. 375.141.1(2)(4)(8) RSMo.

**375.141.1(2)(4)(8) RSMo.**

2. The Court erred in finding that the Administrative Hearing Commission properly found cause to deny Appellant, Lonnell Walker, Sr’s. application for renewal of his insurance Producers License under 371.141.1(2)(4)(8) and (10) RSMo, and that the AHC properly exercised its discretion to deny his application.

**371.141.1(2)(4)(8) and (10) RSMo**

3. The Court erred in finding that the Decisions of the AHC in Lonnell Walker, Sr. vs. Director of Insurance, AHC No 05-1585 D1 and Director of Insurance vs. Walker Services, Inc., d/b/a Walker Insurance Agency are:

- (1) not in violation of constitutional provisions;
- (2) not in excess of the statutory authority or jurisdiction of the AHC;
- (3) supported by competent and substantial evidence upon the whole record;
- (4) authorized by law
- (5) made upon lawful procedure and a fair trial;
- (6) not arbitrary, capricious or unreasonable; and
- (7) does not involve an abuse of discretion.

4. The Court erred in finding that the decisions of the Department of Insurance in disciplining [sic] Appellant Walker Services, Inc., by revoking its Business Entity Insurance Producer License and refusing to renew the Insurance Producer License of Lonnell Walker, Sr. are:

- (1) not in violation of constitutional provisions;
- (2) not in excess of the statutory authority or jurisdiction of the AHC;
- (3) supported by competent and substantial evidence upon the whole record;
- (4) authorized by law
- (5) made upon lawful procedure and a fair trial;
- (6) not arbitrary, capricious or unreasonable; and
- (7) does not involve an abuse of discretion.

5. The Court erred in finding that Appellants, Walker Services, Inc. and Lonnell Walker, Sr. had not been deprived of any due process rights and that no due process violations occurred during the administrative proceedings.

First, these points relied on fail to correctly identify the ruling being challenged. As Rule 84.04(d)(2) reflects, on appeal from an a decision of an administrative agency, we do not review the circuit court, but the decision of the agency. *Stith v. Lakin*, 129 S.W.3d 912, 916-17 (Mo. App. S.D. 2004). In all five points, the appellants point out an alleged error of the trial court, not the AHC.

Second, in Points I-IV, the appellants claim the trial court erred in affirming the AHC, but they fail to identify a specific error of the AHC. The AHC ruled that Walker Services should be disciplined and denied Walker's application for renewal. In Points I and II, Walker makes blanket challenges to the underlying administrative agency's ruling. Point III and IV state that the trial court erred by not finding grounds, as set forth in Section 536.140 of the Missouri Administrative Procedures Act, to reverse the AHC. The points do not address the underlying

issues in the case, and leave the appellate court to speculate as to the nature of the alleged error. The fifth point does not refer to the decision of the AHC, and therefore, presents nothing for us to review.

Third, all of the appellants' points fail to set forth any legal reasons or explain why, in the context of the case, those legal reasons support the claim of reversible error.

Fourth, Point III contains two separate allegations of error. Rule 84.04 requires that each allegation of error be stated in a separate point. *In re Marriage of Fritz*, 243 S.W.3d 484, 486-87 (Mo. App. E.D. 2007). "Grouping multiple contentions about different issues together into one point relied on is a violation of Rule 84.04(d)." *Martens v. White*, 195 S.W.3d 548, 553 (Mo. App. S.D. 2006). In Point III, the appellants claim that the trial court made two different errors: the first in affirming the decision of AHC in the Walker case and the second in affirming the decision of AHC in the Walker Services case.

Finally, the appellants' brief fails to comply with 84.04(e) in that the argument section fails to follow the order of the points relied on. The argument section is not broken into five different sections addressing each point. Instead, they have the following heading at the beginning of their argument section: "Arguments relative to all points relied on." The argument section also fails to set forth the standard of review for each point as required by Rule 84.04(e).

The appellants' points relied on leave this court completely unaware of the errors or issues the appellants assert on appeal. The appellants first identify the alleged error of the AHC in the argument section of their brief: admitting alleged hearsay evidence. The appellants, however, fail to identify what constitutes this alleged hearsay. They only refer to "customer complaints," failing to identify the exhibit numbers or provide references to the hearing transcript or legal file. Citations to the record allow the court to verify the appellants'



allegations. *Pattie v. French Quarter Resorts*, 213 S.W.3d 237, 240 (Mo. App. S.D. 2007).

“When such references are lacking, we are effectively thrust into the role of being [the appellants’] advocate, which is a role we cannot assume.” *Id.*

Whether an appeal should be dismissed for failure to comply with Rule 84.04 is discretionary. *State v. McDaniel*, 236 S.W.3d 127, 132 (Mo. App. S.D. 2007). “That discretion is generally not exercised unless the deficiency impedes disposition on the merits. A brief impedes disposition on the merits where it is so deficient that it fails to give notice to the court and to the other parties as to the issue presented on appeal.” *Id.* While this brief’s points relied on are deficient, we are able to ascertain that the issue on appeal is whether the evidence before the AHC was sufficient. We will review this issue *ex gratia*.

### ***Standard of Review***

We will uphold the decision of the AHC “unless its determination is: unsupported by competent and substantial evidence; arbitrary, capricious or unreasonable; an abuse of discretion; or unauthorized by the law.” *Stith*, 129 S.W.3d at 916-17; see also Section 536.140 RSMo (2000).<sup>2</sup> We defer to the AHC’s factual determinations and do not determine the weight of the evidence. *Stith*, 129 S.W.3d at 917. We will review questions of law *de novo*. *Id.*

### ***Discussion***

The appellants claim that the AHC based its decision on hearsay evidence. “[S]tatements in violation of evidentiary rules do not qualify as competent and substantial evidence in administrative proceedings.” *State ex rel. GS Tech. Operating Co., Inc. v. Pub. Serv. Comm’n of State of Mo.*, 116 S.W.3d 680, 690 (Mo. App. W.D. 2003). Further, the admission of hearsay evidence in an administrative hearing is harmless where the hearsay was cumulative of admissible live testimony. *Speer v. City of Joplin*, 839 S.W.2d 359, 364 (Mo. App. S.D. 1992).

---

<sup>2</sup> All statutory references are to RSMo (2000), unless otherwise noted.

At the end of the proceedings, the parties reviewed the exhibits and specified their objections on the record. During this time, the appellants stated that they had no objection to exhibit 11, an insurance ID card for Veronica Osborne, and exhibit 22, an insurance ID card for Antoinette Jones. Further, the appellants did not object to page 5 of exhibit 15, the insurance ID card for La’Kendra Grimes, and the insurance ID card attached to exhibit 25, Carlos Johnson’s complaint filed with the Department of Insurance. During cross-examination, Walker identified each as an insurance ID card he had issued. He admitted that Antoinette Jones’ insurance ID card was invalid because he had not secured insurance by the effective date listed on the ID card. La’Kendra Grimes’ insurance ID card stated she was covered by AIG Insurance, but Walker admitted he had not secured AIG insurance coverage for Grimes at the time the card was issued. Similarly, Carlos Johnson’s insurance ID card lists JUA Insurance as his carrier. However, Walker testified that he never enrolled Johnson with JUA Insurance Company. Finally, Walker admitted that he issued an insurance ID card to Veronica Osborne with coverage through Omni Insurance, but never obtained insurance for Osborne through Omni.

Issuing invalid insurance ID cards violates section 303.179, which provides: “No person knowingly shall make, sell or otherwise make available an invalid or counterfeit insurance card. Any person who violates this section is guilty of a class A misdemeanor.” According to his own testimony and exhibits that were admitted without objection, Walker issued four invalid insurance ID cards. Under section 375.141.1(2) RSMo (Supp 2003) any violation of the insurance laws gives the director cause to refuse to renew an insurance producer license. While the AHC found numerous grounds under section 375.141.1 to refuse to renew Walker’s insurance producer license, we need not determine whether the evidence was sufficient for each

of these grounds. The evidence was sufficient to deny his application for renewal based on the issuance of an invalid insurance ID card to Osborne, Jones, Grimes and Johnson.

Further, under section 375.141.3 RSMo (Supp 2003) the director may revoke a business entity insurance producer license if the director finds that the partners or managers of the business entity knew or should have known of a violation of an individual insurance producer and failed to report the violation or take corrective action. The AHC inferred that Walker, as president of Walker Services, knew of the violations in the Johnson transaction and failed to take corrective action. We agree with the AHC's analysis and its finding of cause to discipline Walker Services' license for Walker's issuance of an invalid insurance ID card to Johnson.

### ***Conclusion***

The record contained substantial evidence to support the AHC's decision not to renew Walker's insurance producer license and revoke Walker Services business entity insurance producer license. The decision of the AHC is affirmed.